IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.980 OF 2004

Vimal Pandurang Karanjkar ...Applicant

vs.

Vinayak Shrikrishna Londhe & another ...Respondents

Mr.Ramesh Dube-Patil i/b M/s.Ajay Miser & Co.for the Applicant
Mr.Rajesh More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 4,2006.

P.C.:

1. Heard Advocate appearing for the Applicant in support of prayer for grant of leave. The Applicant is the complainant in a complaint filed under section 138 of the Negotiable Instruments Act, 1881. The learned Trial Judge has acquitted the first Respondent. The acquittal is on the following grounds:

i) Service of notice under section 138(b) of the said Act of 1881 was not proved. At the relevant time the first Respondent was detained in jail,

ii) The Applicant has not proved the cheque and the signature on the cheque and the contents of the cheque are not proved and therefore the cheque has not been exhibited,

iii) Dishonour memorandum issued by the bank is also not proved and therefore, it is not exhibited.

iv) Office copy of the demand notice is not proved.

2. The learned Advocate for the Applicant submitted that the notice was sent to the first Respondent by Registered Post A.D. at the address of the jail. He submitted that the original cheque, original Memorandum issued by the bank regarding dishonour of the cheque and the office copy of notice were placed on record along with list of documents. He submitted that there was no dispute about the said documents. He, therefore, submitted that the learned Judge has committed an error by passing the order of acquittal.

3. I have considered the submissions. I have perused the Affidavit of evidence filed by the Applicant. In the Affidavit of evidence, the Applicant has not stated that the cheque bears the signature of the first Respondent. There is no specific reference to the Memorandum of dishonour allegedly received by the first Respondent from the bank. The Applicant has merely stated that the Applicant has sent notice dated 11th July 2000 by Registered Post A.D. to the first Respondent and he received the notice. There is no reference of any acknowledgement signed by the first Respondent. Moreover, from the copy of notice which is annexed to this Application, it appears that the same was sent at the alleged residential address of the first Respondent and it was not sent to the concerned jail where the first Respondent was admittedly detained at the relevant time. As stated earlier, the finding of the Trial Court is that the first Respondent was detained in Central Jail at Nasik at the relevant time.

4. In the circumstances, I find no error in the finding recorded by the learned Trial Judge that the Applicant has not established the service of demand notice. Considering the Affidavit of evidence filed by the Applicant, the learned Judge was right in taking the view that the case was not at all established by the Applicant. It is obvious that the view taken by the learned Trial Judge is a possible view which could have been taken on the basis of the evidence on record. No case is made out for grant of leave. Application is rejected. Consequently, Appeal is also dismissed.

JUDGE